THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NOs:8337 & 8338 of 2004

WEDNESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

W.P.NO.8337 OF 2004:

Between:

G.Ramulu

.. Petitioner

and

The Inspector General,

Central Industrial Security Force

and others.

.. Respondents.

W.P.NO.8338 OF 2004:

Between:

Chatram singh .. Petitioner

And

The Inspector General,

Central Industrial Security force

And others. .. Respondents.

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NOs.8337 and 8338 OF 2004

COMMON ORDER:

Since these two petitions are inter-connected they are being disposed of by a common order.

(2) Petitioners in these petitions are constables in the Central Industrial Security Force (CISF) constituted under the Central Industrial Security Force Act,1968 (the Act) and were subjected to departmental enquiry by the third respondent on the basis of a preliminary enquiry conducted by Mr. P.K.Panda, relating to a scuffle that took place between them and were imposed a punishment of dismissal from service. Against the said order they preferred an appeal to the appellate authority, i.e.,Deputy Inspector General (2 respondent) who by his order dated 24.7.2003 modified the punishment of dismissal from service to reduction of pay to the minimum of time

scale of pay, i.e., Rs.3050 from Rs.3,500/- for a period of five years in the pay scale of Rs.3050-75-3950-80-4950 with effect from the date of reinstatement. Against the said order they preferred revision to the Inspector General (first respondent), who dismissed the same by the orders impugned in these writ petitions. Hence, these petitions.

(3) The main contention of the learned counsel for the petitioners is that since petitioners were subjected to disciplinary enquiry on the assumption that the alleged scuffle between them was in connection with the sharing of the amounts collected from the truck owners at the entry gate and that at that time Chat Ram Singh (petitioner in W.P.No.8338 of 2004) had hit G.Ramulu (petitioner in W.P.No.8337 of 2004) with a lathi resulting in bleeding injury to G.Ramulu and since the evidence adduced during the course of enquiry does not disclose collection of any amount from the truck owners by G.Ramulu or that there was a scuffle between the petitioners and on the other hand the evidence adduced shows that G.Ramulu sustained the injury on his head due to an accidental fall, respondents erred in imposing a punishment on the petitioners. It is his contention that respondents 3 and 2, as the original and appellate authorities were in error in taking into consideration the statements of witnesses recorded by the preliminary enquiry officer behind the back of petitioners, and without taking into consideration the explanation of these witnesses that they signed those statements without going through the contents, as they were in a hurry to attend duty. It is his contention that when the witnesses examined by the enquiry officer did not support the charge framed, statements recorded by the preliminary enquiry officer cannot be made the basis for holding the charge proved and so respondents 3 and 2 were in error in taking into consideration the statements recorded by the preliminary enquiry officer by placing strong reliance o n ***UNION OF INDIA v s MOHD.IBRAHIM*** where it is held that imposition of punishment basing on the statements recorded during the preliminary enquiry is unsustainable. He took me through the evidence adduced during the course of enquiry, in support of his contention that the witnesses examined during the enquiry in both the cases did not support the charge framed.

(4) The main contention of the learned Standing Counsel for the Central Government is that the evidence on record clearly shows that there was a scuffle between the petitioners and so the contention that G.Ramulu sustained a head injury due to a fall is but an after thought, probably in pursuance of a compromise

between the petitioners and since appellate authority took a lenient view and reduced the punishment imposed on the petitioners, which was confirmed by the revisional authority, petitioners are not entitled to any relief.

(5) Rule 34 of the Central Industrial Security Force Rules, 2001 (the Rules) framed under the Act classifies the major penalties and minor penalties that can be imposed by the disciplinary authority on the members of the force. Since the punishment imposed against the petitioners by the appellate authority, (second respondent) is reduction of pay from Rs.3,500 to Rs.3,050/- for a period of five years, the same is a major penalty as per Rule 34(4) of the Rules. Procedure for imposing a major penalty is prescribed in Rule 36 of the Rules. Since, it is not the case of the petitioners that there is any procedural violation it has to be taken that all the procedural formalities are duly complied with by respondents while holding the disciplinary enquiry against the petitioners.

(6) The charge against G.Ramulu (petitioner in W.P.No.8337 of 2004) is about his misconduct of fighting with Chat Ram Singh (petitioner in W.P.No.8338 of 2004) at about 8.40 P.M. on 21.11.2002 near dock main gate in connection with the sharing of money allegedly collected during C-shift duty at WOB gate on 20.11.2002, resulting injury to his head, and also for creating nuisance, tarnishing the name, fame and image of the CISF in the eyes of common public. The charge leveled against Chatram Singh relates to his misconduct of fighting with G.Ramulu at about 8.40 P.M. on 21.11.2002 near dock main gate in connection with sharing of money allegedly collected by him during C-shift duty at WOB gate on 20.11.2002 and his assaulting G.Ramulu with a lathi on his head, and creating nuisance tarnishing the name, fame and image of CISF in the eyes of common public.

(7) In support of the above said charges S.K.Mal, B.P.Sing, P.Arumugam and Mangey Ram were examined as P.Ws.1 to 3 and 5 respectively in both the cases. P.Devadas was examined as P.W.3A. Chetram Singh was examined as P.W.4 in W.P.No.8337 of 2004 and G.Ramulu was examined as P.W.4 in W.P.No.8338 of 2004. Y.V.Ramaiah and P.K.Panda were examined by the enquiry officer as court witnesses. G.Ramulu examined K.Ramu, Jokhan Prasad and D.Somasekhar as his witnesses, while Chat Ram Singh examined K.K.Sharma, Deen Dayal and Narayana Hegde as his witnesses. The prescription slip given to G.Ramulu is marked as exhibit. It shows that he suffered a lacerated wound on his scalp.

(8) The evidence of S.K.Mal examined as P.W.1 in both the cases is that he saw the petitioners in both the cases gossiping and that in the meanwhile G.Ramulu asked Chatram singh why he did not refund the money borrowed from him resulting in a tense situation and thereafter since there was a scuffle between them G.Ramulu had fallen down on an iron angle fitted to the road and sustained an injury to his head and that persons present there for the
C-shift duty had separated them. During cross examination he stated that there was no collection of money either from the truck driver or from others at WOB gate during C-shift duty on 20.11.2002 and that he did not see Chatram Singh hitting G.Ramulu. During cross examination by the enquiry officer he denied his having made the statements recorded by the preliminary enquiry officer.

(9). The evidence of B.P.Singh, P.W.2, in both the cases, is that when he reached the dock main gate by C-shift vehicle at about 8.30 P.M. on 21.11.2002 he saw Chatram Singh and Jokhan Prasad inside the dock main gate and in the meanwhile G.Ramulu came there and asked Chatram Singh as to why he did not return the money borrowed from him whereupon a quarrel ensued and both of them pushed each other, and in the process G.Ramulu had fallen down on
an iron rod fitted to the road and sustained bleeding injury on his head and that he separated both of them with the help of Jokhan Prasad. During
cross examination on behalf of petitioners he stated that he has no knowledge about the collection of money at the gate from truck drivers or other persons and that he did not see Chatram Singh assaulting G.Ramulu and that he only saw a scuffle between both of them. During cross-examination by the enquiry officer he denied his having made the statement recorded by the preliminary enquiry officer.

(10) The evidence of P.Armugam, who was detailed for 12 hours duty at the dock main gate as shift incharge from 5.00 P.M. on 21.11.2002 to 5.00 A.M. on 22.11.2002 examined in the cases against the petitioners, is that about 8.30 P.M. on 21.11.2002 when the C-shift duty personnel were going to the security cabin to sign in the duty deployment register, petitioners were found pushing and pulling each other inside the dock main gate and so he, along with Y.V. Ramaiah, went to them and found G.Ramulu with a bleeding injury on his head, and Chatram Singh holding a lathi in his hand, and that he took away the lathi from Chatram Singh and kept it in his custody after separating them with the help of others and that he does not know how G.Ramulu sustained injury to his head, but came to know that the injury was

due to a fall on the ground. During cross examination on behalf of G.Ramuly he stated that on hearing shouts, of C.Shift personnel he went inside dock main gate and saw petitioners catching hold of each other, and that he did not see Chatram Singh beating G. Ramulu. During cross-examination by the enquiry officer he denied his having stated about his seeing Chatram Singh assaulting G. Ramulu before the preliminary enquiry officer and that that statement was not read over and explained to him and that he cannot say the reason for scuffle.

(11) The evidence of P.Devadas who was detailed for C-shift duty from 9-00 p.m. on 21-11-2002 to 5-00 a.m. on 22-11-2002, in both the cases, in that when he reached the dock main gate at 8-30 p.m. on 21-11-2002 he saw G. Ramulu sustaining a head injury due to a fall due to slipping and Chatram Singh lifting him. During cross-examination by the petitioners he stated that he did not see any money transaction or quarrel between Chatram Singh and G. Ramulu.

(12) The evidence of Chatram Singh in the case against G. Ramulu is that when he was talking to Jokhan Prasad and B.P.Singh inside dock main gate G. Ramulu came there and asked him for refund of Rs.500/- taken by him as loan from G. Ramulu and after he assured Ramulu that he would return the amount within two or three days they exchanged jokes and in that process when he placed his hand on the shoulder of G. Ramulu, G. Ramulu lost his balance and fell down and sustained a minor head injury due to his head hitting and iron angle fitted to the road and that he lifted him. During cross examination he stated that there was no scuffle between him and G. Ramulu on 21-11-2002 inside the dock main gate.

(13) The evidence of G. Ramulu in the case against Chatram Singh is that when he enquired Chatram Singh about the return of hand loan promised to be returned on 21-11-2002 Chatram Singh, by placing his hand on his shoulder assured him that he would return the amount in two or three days,and at that time he lost his balance and sustained minor head injury due to his head, hitting on iron angle. During cross-examination he stated that he did not notice truck drivers and other persons giving money to the persons deployed at the gate, and that there was no quarrel between him and Chatram Singh inside the dock main gate and that Chatram Singh did not hit him with a lathi. During cross-examination by the enquiry officer he admitted that he did not state before the preliminary enquiry officer about Chatram Singh

borrowing of Rs. 500/- from him and stated that his previous preliminary enquiry officer did not read over and explain the statement recorded from him.

(14) The evidence of Manage Ram examined in both the cases is not much of importance because even according to him he was not an eye witness to the incident of the alleged quarrel between Ramulu and Chatram Singh inside the dock main gate and his knowledge about the said incident was though Y.V. Ramaiah.

(15) Though the evidence adduced during the course of enquiry does not disclose collection of any illegal gratification by G. Ramulu or about Chatram Singh hitting G. Ramulu with a lathi on the head, the evidence of the eye witnesses that G. Ramulu sustained the head injury due to a fall on an iron angle fitted to the road, cannot be believed or accepted because the prescription slip given to G. Ramulu produced during the course of enquiry shows that G. Ramulu suffered a lacerated wound on the scalp, which is possible due to a blunt weapon and since an injury caused due to the head hitting an iron angle, is likely to cause incised wound. In a departmental enquiry since proof beyond reasonable doubt, as in a criminal case, is not necessary, the evidence on record has to be scrutinize to see if the finding of the enquiry officer and the appellate and revision authority that petitioners are guilty of misconduct needs interference, and if the punishment imposed by the appellate authority, confirmed by the revision authority is disproportionate to the charge held proved .

(16) The first part of the charge relates to sharing of money collected from truck drivers and the second part relates to quarrel that ensured between the petitioners with regard thereto. Though there is no evidence with regard to collecting of money from the truck drivers, or the sharing of the money between the petitioners inter se, there is evidence on record to show that there was a quarrel between the petitioners, because S.K. Mal clearly stated that there was a tense situation because of the scuffle between the petitioners in connection with the returning the amount borrowed by Chatram Singh and since the evidence of B.P. Singh shows that petitioners quarreled and pushed and pulled each other in connection with a money transaction and that G. Ramulu had fallen down in that process and since the evidence of Armugam also shows that there was a scuffle and pulling and pushing between the petitioners inter se inside the dock main gate. Since petitioners are members of an uniformed force, they are bound to maintain strict discipline, and are expected to set an example to others. Members in uniform, fighting with each other, exhibits their

indiscipline. Thus both the petitioners quarrelling and pushing and pulling each other while in duty is but an act of indiscipline. So irrespective of the fact whether G. Ramulu sustained injury on the head as a result of Chatram Singh beating him with the lathi and since of the evidence of p. Armugam clearly show that he, with the help of Y.V. Ramaiah and C. shift persons, caught hold of both the petitioners and separated them and taken away the lathi from the hand of Chatram Singh and kept with him, clearly establishes the grave nature of the fight between the petitioners was not due to exchange of jokes. If that is so necessity of separating them with the help of others, and the necessity of Armugam taking away the lathi from the hands of Chatram Singh would not have arisen at all.

(17) The contention that the statements of the witnesses recorded by the preliminary enquiry officer were not in fact read over to the witnesses concerned and that the preliminary enquiry officer had himself written something and obtained their signatures without explaining to the contents thereof to them cannot be accepted, because there is nothing onr ecord to show that person who conducted the preliminary enquiry has a prejudice against any of the petitioners, and since the statements of witnesses, admittedly, were recorded immediately after the incident between the petitioners. Unfortunately misplaced sympathy makes people to resile from the statements made by them earlier. The facts of this case ex-facie show that there was compromise between the petitioners, after charges were framed against both of them, and so both of them must have made request to the witnesses to resile from the statements made by them earlier before the preliminary enquiry officer.

(18) Petitioners who indulged in an act of indisciple and made others resile from the statements made by them earlier, obviously as a result of a compromise between them, coupled with the fact that both of them filed these petitions on the very same day from the same office clearly shows that there is a compromise between them. If not the possibility of their filing these petitions on the same day that too from the same office are too remote. Since petitioners with a view to wriggle themselves out of the punishment that is likely to be imposed against them, had made the witnesses to resile from their statements made earlier, punishment imposed by the appellate authority on them confirmed by the revision authority cannot be said to be excessive or unreasonable.

(19) So, I find no merits in these petitions and so these writ petitions are dismissed

with costs.

14.9.2005.

mdaa.